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someone else *e.g.*, Adam and Eve), even as they forgive their debtors ; and a creditor cannot be repaid by another after he had forgiven his debtor the amount the debtor was owing ; yet they believe that God has forgiven man and also taken the debt from Jesus. This kind of forgiveness cannot be called forgiveness at all ; hence according to the Christian belief God does not know real forgiveness.

12. It is generally known that an inferior being is sacrificed for the safety of the superior being. It is impossible that Christ being superior should be sacrificed for the safety of man. For example, if a man and a goat are both in danger of being run over by a car the driver will try to save the man at the expense of the goat. If so, how can God the most Wise punish Jesus to save man ?

13. That the Christian doctrine of atonement is unnecessary is borne out by the Bible which shows the different ways of absolving sins and having salvation such as praying and turning from wicked ways (*vide* Chron. 7 : 14), forgiving others their trespasses (Matt. 6 : 14,) and repenting (Lk. 15 : 7).

14. By believing that Christ died on the cross the Christians admit that their God is accursed (*vide* Deut. 21 : 22 and 23). Also, Paul says Christ hath redeemed us from the curse of the law, being made a curse for us ; for it is written : cursed is every one that hangeth on a tree" (Galtt 3 : 13) But we read in Leviticus 24 : 15 that "Whosoever curseth his God shall bear his sin". It follows then that the Christians shall bear their sins and so after all there is no atonement.

15. The naked truth is that Christ did not die on the cro s because like Jonas who went into the whale's belly alive for three days and three nights and came out alive (see Jonah 1 and 2), Jesus was put in the tomb alive and came out alive. Jesus himself told of this incident of Jonas as a sign from him, or in other words that a similar episode in his life must be expected (Matt. 12 : 39 and 40). Also Jesus prayed hard for the cup *i.e.*, death on the cross, to pass from him (*vide* Mark 14 : 35 and Lk. 22 : 41 and 42) and God accepted his prayer as we read in Hebrews 5 : 7 "Who in the days of his flesh when he offered up prayers and supplications with strong crying and tears unto him that was able to save him from death, and was heard in that he feared". It is proved therefore beyond the shadow of doubt that Christ did not die on the cross. Consequently the

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Christian doctrine of atonement falls to the ground without question. In place of this false doctrine the Holy Quran has shown us an antidote against all sins, which is compatible with human conscience and the laws of nature. That antidote is to worship God day and night and to do good: for good deeds remove ill-deeds (Quran Chapter 11 : 114).

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بسم الله الرحمن الرحيم

نحمده ونصلي على رسوله الكريم

PRINCIPLES OF THE MUSLIM LAW OF INHERITANCE

By Sh. Mohammad Ahmad Mazhar, B.A. (Hons.) LL.B.

[By kind permission of the Kapurthala Academy where this paper was read on the 18th Dec., 1944.]

It is my humble duty this evening to explain some of the principles of the Muslim Law of Inheritance. The subject forms an essential and integral part of Muslim Jurisprudence and embraces some vast problems such as the production and distribution of wealth, social morality and Islamic contribution to world peace by reconciling the conflict between capital and labour. I know my limitations and can give you only a brief outline of the subject.

But before I proceed I may be permitted to make a few observations necessary at the very outset.

1. In Islamic Jurisprudence, which is fundamentally based on the Holy Quran, the spiritual forms the nucleus of the secular and you cannot dissociate one from the other any more than you can separate the soul from the body without making it a deadweight. A student of Muslim Jurisprudence who does not keep to this standpoint in his study from end to end, is likely to make a wholly wrong approach. This being an indispensable prerequisite, I hope and beg that I may not be

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considered dogmatic or didactic when I just make passing references to the spiritual and moral aspects of the subject. If you want to remain true to the inner spirit of Islam, it is impossible to approach the subject from a purely materialistic viewpoint which thinks in terms of loaves and fishes only.

2. Secondly, I may submit that I am dealing with this subject from the Muslim standpoint. And the Quran says, "Bear good tidings to My servants who listen to the word, then follow the best of it" (39 : 18). In another place it says, "As for that which profits the people, it tarries in the earth" (13 : 17) *i.e* whatever principle is beneficial to mankind shall be made to subsist in the world. So there is a survival of the fittest in the realm of laws as well.

After these observations, let me proceed with the subject which I have divided into two parts. The first part deals with definitions and legal concepts of the words "Muslim", "Muslim Law" and "Inheritance." The second part deals with some principles which govern the Islamic Law of Inheritance translating theory into practice. It is important to grasp the first part though at first sight it may appear rather unnecessary. But to my mind it is the quintessence of the Muslim Inheritance Law and without it the subject cannot be appreciated properly.

PART I

Principle :—By the word principle I do not mean the number of heirs and their respective shares. That is simple arithmetic which can be picked up easily. By principles I mean the driving force, the guiding factors of Inheritance law, the bedrock upon which the whole edifice is raised, the root from which all branches shoot out and savour of, the same qualities as are latent in the root.

Muslim :—By the word Muslim I do not mean a 'Mohammadan'—a word unknown in the Islamic dictionary and it is only a taunt of the Christian missionary which has gained vogue just in the same way as "native" for an Indian and "nigger" for an Abyssinian. Muslim means, even by etymology, one who is completely resigned to the Will of God and is at peace with man and thus it envisages the two basic concepts of

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Islam *viz.* the Oneness of God and the common brotherhood of man. The idea of common brotherhood springs as a natural result of the idea of the Oneness of God and implies self-sacrifice, self-effacement and a disciplined ego held well within the proper bounds. I mention this, because these are two focii towards which all Islamic laws claim to converge; two goals which are reached from all standpoints, whether moral, legal, social, political or ecclesiastical. Of course there is no ritual as such in Islam.

Inheritance :—The word inheritance connotes property, ownership and title. These three, in the Islamic sense, have not the ordinary materialistic notions; they are very much different from that. Absolute ownership of a thing can only vest in the Creator thereof. And the created can have only a derivative or permissive title to it emanating from the Creator.

> Do they not see that We have created cattle for them, out of what Our hands have wrought, so that they are masters ?
> (XXXVI : 71)
>
> Those who spend out of what We have given them II : 3
> And give them of the wealth of Allah which He has given you
> (XXIV : 33)
>
> Say, O Allah, Master of the kingdom ! Thou givest the kingdom to whomsoever Thou pleasest —(III : 25)

In other words man is called owner of a thing only metaphorically. And rightly so. For, how can his title be perfect and absolute except with the leave, license or permission of the true Owner—the Creator. So man possesses, so to say, a charter of rights about property and the law of inheritance is a part of that charter, as I will try to show. On his death the charter expires and the property is again automatically completely vested in the true owner, the Creator, from whom *through* the last holder and not *from* the last holder it is vested again in the heirs and so on.

It is clear that this concept about property is amenable to the Oneness of God and forms a common link between man and man. The charter of rights in the above state gives the possessor full power to convey a perfect, God-given title, but during life-time of the possessor only. This angle of vision places title on a far higher level than this or that ancestor or propositus and knows no distinction between ancestral or acquired property or between a male or female holder of property, for in this sense all property is God-given. But it

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does not mean that the individual, national or international ownership of property is negatived by this idea inasmuch as nations as aggregates of individuals enjoy a similar charter.

Muslim Law:—So much for title and ownership. But what is Muslim Law? There are three ways of approach to this question. Firstly, as you know, Muslim Law is based on 4 sources in order (a) The Quran—which to a Muslim is the spoken Word of God—the revealed Book. (b) The Hadith *i e.* sayings, precepts and actions of the Prophet (peace be on him) as the interpreter and model of the Quranic teachings, (c) Ijma i e. concurrence of opinion, (d) Kiyas, *i.e.*, analogical deductions derived from the first three. Now Hadith, being an interpretation, merges into the first and concurrence of opinion and analogical deductions being only shades of Reason we may say that Muslim law is equal to the Quran plus human reason in the light of the Quran. This is another way of saying that in Muslim Law, the Quran is an additional factor over and above the modern jurisprudence and modern legislature.

And as almost all the law of inheritance—a permanent institution of humanity—is based on the Holy Quran, I am called upon to show what is the place of the Quran in Muslim Jurisprudence as compared to Modern Jurisprudence, or more correctly speaking, English Jurisprudence.

The latter proceeds on the well-known maxim "the King can do no wrong". This maxim to my mind is at once a fallacy, a counsel of despair and a wishful thinking. It is a fallacy inasmuch as it says that the king, a mortal, can do no wrong, *i.e.* is infallible. It is a counsel of despair, for it betrays a mental reservation to the effect that the king may do wrong but you should suffer the wrong as if it were right. And lastly, it is wishful thinking as it denotes an admission of imperfection in man-made laws and a constant yearning of the human mind that the law may be such as to do no wrong. Now, this last end forms the beginning of the Islamic concept of law. I regard this aspect as most essential for, if you lose sight of it, you cannot view the Muslim law of inheritance in its true perspective.

> Your parents and your children, you know not which of them is the nearer to you in usefulness, this is an ordinance from Allah; surely Allah is Knowing and Wise (X : 11).

Now there is another way of approach. The Creator has a definite design and aim in the make of the universe as is

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amply proved by the laws inscribed in the Book of Nature. And in the Quran the appeal is always from the physical to the moral and spiritual to prove that there are similar laws of the spirit and human nature, both being complements of each other. The discovery of both these laws has formed the best heritage of man ever since the beginning of the world and has created in him an insatiable thirst for knowledge to grow from more to more. The astronomer in his observatory, the scientist in his laboratory, and the philosopher in his study is constantly experimenting to unfold the book of nature, just as the legislator in his chamber makes his own experiments to know the requirements of human nature. In the nature of things, the discovery of these laws is more a matter of chance than design. And it is seldom that the heads of the same department fully agree with one another, not to speak of the heads of various departments. In course of time all agree to differ and

> The starry heaven above me
> And the moral law within me,

remains almost a riddle unsolved. I will let others alone. They have some sure basis and data for their experiments. But this human legislator out of all is the most dangerous experimenter. He is not a mere theorist. So let me for a moment examine his pretensions as he wants to perform sundry experiments on my rights to my weal or woe. He is directly concerned with me. Now, first, I find that he chances to be there as a result of popular vote wisely or unwisely exercised or forcibly or fraudulently obtained. Next I note that he is there because much better men, head and shoulders above him, out of disdain or humility did not deign to enter the lists and compete with him. And what is his wherewithal, his wares? Reason, that is to say, a limited experience of the past, just a conjecture about the shape of things to come. Reason—always doubting, disquieting, surmising Reason—never sure of its ground. But is he selfless or above bias or class hatred? Possibly, but not always. Then what are his credentials? Is he above party politics? God help us, he is the very creature of them. But he may be a broad-minded nationalist—a national socialist Hitler, or a communist Stalin or an Imperialist Churchill. Evidently then he will be grinding his own axe about forms of Government which are again only experiments on a bigger scale. I want my basic rights as a man which the

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Creator gave me and which have somehow been usurped by others. He may forge out an invidious pegging law or a discriminative Atlantic Charter. Or, coming nearer home, with the best of intentions, he may not be able to shoulder problems like Pakistan or Akhand Hindustan, on account of his single-handed, doubting Reason and ignorance about the shape of things to come. Or, he may call the elders of different nations at Geneva to draft a scheme for world-peace which may prove abortive and he may be shipwrecked by the first gale and left stranded to play with firearms and killing machines in order to draw another post-war scheme corrected in the light of new experience, so dearly bought.

In any case, I submit, this gentleman legislator, my friend, is the most dangerous experimenter. Some limit must be set to his experiments on an agreed and fundamental basis concerning mankind. And what is required of him? Not this or that bit of law, but a comprehensive law about the requirements of mankind. He must have in his hand the electric coils of all the other laws, physical, social, moral, ecclesiastical and international and must note the currents flowing in them and see that the law he makes is apiece with other laws as well as one kind of law should be wholly consistent and homogeneous in principle and detail. A ripple in the mid ocean is destined to reach the shores. And one system of law must react on others at least in common points of contact between man and man.

Considering the staggering magnitude of the problem, can all this be accomplished by single-handed doubting Reason? Something more is required, not to retard or deprecate reason but to aid, augment, and implement it. Whether this gulf is bridged by the Quran or not is a different question; but the gulf—the yawning gulf—is there.

In Muslim Jurisprudence this gap is claimed to be filled by the Quran and it is in this setting that the Quran sounds a note of warning. "Surely His is the creation and the Command" (VII : 54). It is therefore up to the Creator to give laws as well because He has created everything and appointed its spheres of action, (XXV : 3) and because nothing is hidden from Him in earth or heaven and (XIV : 38) He knows the past, the present and the future and is the Sustainer of all the worlds. And so He must give the law of human nature—just as He has prescribed the laws in the Book of Nature.

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And what should be the attributes of this law? The Quran has its own nomenclature and calls it ذکر *i.e.* a reminder and elevator for the principle is already ingrained in the human mind and (نوریمشی بہ فی الناس) it should be a torch-bearer in all the walks of life and (مافرطنا فی الکتاب من شیٔ) and it should embrace all the requirements of man (وانا کم من کل ماسا لتموہ) and leave out no legitimate aspiration unfulfilled. It should be a (قصد السبیل) middle course of action countenancing no partiality and (لن تجد لسنتہ اللہ تبدیلا) a fundamental and everlasting truth, (تاتی اکلہا کل حین) an ever fruit-bearing tree considering its efficacy. And it should consist of (محکمات) the fundamentals and (متشابہات) rules, orders and by-laws conforming to the fundamentals and (لاریب فیہ) it should be absolutely above any doubt or reproach. And it should not conflict with any other just law whether social, moral, ecclesiastical or international, so that all should form the links of the same complete chain strengthening one another. And the goal of these laws should be (سبل السلام) that they are all so many paths of peace reflecting the Will of the Lord.

And what about man-made laws? (لوجدوا فیہ اختلافا کثیرا) You will find abundant inconsistency in them. Nay more. The measure of respect and obedience which human statutes command is the measure of their conformity to these eternal laws of the spirit as is evidenced by their constant amendments, repeals, and annulments, which reflect the revolt of the human mind against them, which is further evidenced by the swelling number of enactments on the Statute Book.

I said in the beginning that the maxim that the 'King can do no wrong' is an admission of imperfectness of law and denotes a burning desire of mankind for a perfect law. This is the very place of the Quran in Muslim Jurisprudence which seeks to aid Reason and within its scope gives full liberty to it to work out the details of given fundamental laws which are based on human nature itself. In other words the Quran is the mainstay of the legislator and the judge; his touchstone, keynote, and guiding star. I had to take a long sweep to come to the point and this marks the end of the theoretical part of my discourse.

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PART II

The basic principle governing the law of property, and so of inheritance as well, is the Quranic verse :

"That it may not rotate among the rich alone" (LIX : 7)

Now let us see whether this principle which prohibits the conservation of wealth by the rich conforms to the above noted attributes of law.

(*a*) It will be readily conceded that the principle of this verse is rooted in the idea of common brotherhood.

(*b*) It is equally applicable to every state of society in any time whether past, present or future. For, one cannot reasonably imagine that this principle will give way in any state of society. It is an everlasting truth.

(*c*) Whatever laws of wealth may be made with the aid of human reason, whether national or international, must be tested on this fundamental and touchstone.

(*d*) The principle does not adversely react on any other just law for it prohibits the conservation and not the enjoyment of wealth.

(*e*) It is a middle course between the two extremes—riches and poverty.

(*f*) It is a reminder, particularly to the present warring nations of Europe, that a departure from this principle in the overbalanced acquisitions of property or empires must disturb the world-peace.

(*g*) The principle is consonant with the definition of title and property as above described, inasmuch as it reflects the true owner's will and wish in the enjoyment of property.

(*h*) And lastly it is conducive to world-peace and common brotherhood—the goal towards which all Islamic laws converge.

And even supposing for the sake of argument that you have by your own independent reason and experience lighted upon this principle you are all the more fortified against any doubts you may entertain as to its practicability in the sphere of legislation now or in times to come. This is another way of saying that your assurance is doubly assured for all times.

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It is clear that this principle agrees in every detail with the aforesaid concepts of law.

The verse presupposes the existence of the rich and poor as two essential components of society and that neither can be eliminated from the general scheme of the Maker. And it is only a truism to say that if there were no rich and poor, there would be no development of human character and attainment of the higher virtues and moral values such as generosity, nobility, self-sacrifice, or the other way round, perseverance, contentment and resignation which are man's best heritage and without which he will be reduced to a mere machine. Any system of law that seeks to eliminate one or the other attempts to frustrate the very scheme of the Maker. So this principle instead of antagonising labour and capital or the rich and poor is a joining link between the two. It takes the sting out of richness and poverty and is as natural as the flow of water from a higher to a lower level.

All this sounds very well as a precept or injunction. But let us see how this legal concept enters into the law of inheritance. And here I am face to face with the first principle of Muslim Inheritance *i.e.*, the right of an heir, apparent or presumptive, comes into existence for the first on the death of the ancestor and he is not entitled until then to any interest in the property to which he would succeed as an heir if he survived the ancestor. This is another way of saying that nobody can be the heir of a living Muslim and hence the chance of an heir's succession cannot be subject of, a valid transfer. The heir has no vested interest in the ancestor's property and the latter has got a free and absolute power of disposal over the same. The following implications are hence clear:—

(*a*) Legally—the principle cuts at the root of accumulation for any kind of alienation is a step forward in the distribution of wealth which is the main object of the Muslim Inheritance law.

(*b*) Economically—it is calculated to help trade and industry as the alienor cannot be compelled to confine himself to one calling or profession—say, agriculture only.

(*c*) Psychologically—it will instil into the heir the virtues of self-help and self-effort for he cannot place

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dependence on the forbears' property which may or may not descend to him. He must be an architect of his own fortune, for the inheritance in this aspect is rather a boon than a vested right.

(*d*) Morally—it is helpful towards family peace and social morality for the heir cannot charge upon the ancestor so many vices, real or fictitious, to get his alienation cancelled, as happens under those systems of law which gave a vested right to the would-be heir.

(*e*) The title conveyed being perfect, ensures fair dealing and reasonable price inasmuch as the transferor's title cannot be displaced sooner or later according to the caprice of the would-be heir. A perfect title free from any cloud emanating from the Lord as discussed in the beginning is the rule of Islamic law which puts a stop to litigation and ensures social and family peace.

It will not be out of place here to make a few observations about the Punjab Customary Law. Some of the main defects in the power of restraint against alienation or the agnatic theory are the following.

(*a*) It is rooted in the idea that the alienor being ignorant is incapable of managing his own affairs and his alienation must conform to certain standards of the law of necessity, while necessity knows no law. The remedy lies in educating the agriculturist and not in depriving him of his liberty of action.

(*b*) And this power of restraint has miserably failed in its object. Naturally enough, the alienor revolts against this restraint and devises ways and means in order to give false colours to the alienation and this brings in its wake speculative litigation, poverty and indebtedness as a normal result. I can quote a hundred and one instances where a sonless proprietor made false and fictitious alienations because he could not brook this power of restraint in a would-be reversioner. And in some cases the reversioner got the ancestor murdered to evade his prospective alienations, for the heir was laying store by the forbear's property.

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(c) And kindly mark the moral degradation. In this kind of litigation it is almost common to charge all sorts of vices upon the ancestor alienor, truly or falsely, to get the alienation cancelled in the heir's favour. It is a fundamental principle of human phychology that even too much talk of vices is a way to actually spread it in society. If you tell a child stories of stealing he will no longer hold stealing in awe and may himself become a thief. But under the Punjab Customary Law the past sins of a hitherto reformed or dead alienor are raked up in courts of law. And this in its turn contributes and adds directly or indirectly to immorality and extravagance. The cure becomes the malady.

Litigation, bitterness and dissipation are inherent in this power of restraint. It miserably fails in its object. And to cover up this failure the legislature has frequently to make further protective agrarian laws which bring in their wake class hatred, communalism and so on. And please mark the antithesis. In respect of his self-acquired property there is no such restraint and the agriculturist is presumed to be a perfectly prudent man. So the agnatic theory is symbolic of ignorance and instead of preventing extravagance it has only augmented it as a potential and fertile source of litigation. And no law can be good which itself opens the doors of litigation. Customary law being most uncertain, for one may set up almost any custom, and the standards of necessity varying from time to time, nearly every alienation leads to ruinous litigation and social unrest. And the money-lending business with all its evils is also an indispensable consequence of this power of restraint.

One may ask, what is the remedy against extravagance? Now, preservation of property being the normal human instinct, squandering is only an exception. You cannot make an exception a rule just as you cannot tie down everybody's hands because some people will steal or commit suicide. Squandering being the result of ignorance, bad company, and bad breeding, its remedy lies elsewhere and not in the power of restraint.

2. The second principle of inheritance is that it is subject to payment of funeral expenses, debts and legacies. This is simple, honest and natural enough to require any comment.

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3. The third principle is that on the death of the last holder the property falls into tenancy-in-common to be divided among a set of heirs—sharers, residuaries, and distant kindred, as the case may be. Within the short time at my disposal I cannot be expected to discuss the reason and philosophy lying behind each share. But the following points stand out :—

(*a*) It is simple arithmetic to know who are the heirs and what are their respective shares. There is absolutely no doubt about it. This gives the go-by to all litigation. There are generally two fertile sources of litigation about property, *viz.*, alienation and inheritance. And Islamic law steers clear of this disturbing factor of family and social peace on each occasion as the law on the point is perfectly uncontrovertible.

(*b*) The second point is that primary heirs, *i.e.* father, mother, sons, daughters and husband or wife of the deceased succeed simultaneously and not to the exclusion of one another. This reflects the normal human instinct and natural desire of the deceased, and ensures peace and well-being of the family tree, sustaining the roots as well as the branches. A more remarkable feature of this inheritance is that each heir, male or female, takes and enjoys an absolute title during his life-time and on his death becomes a fresh stock of inheritance, the property never reverting to the original ancestor unlike the agnatic theory which always looks to the original ancestor as a stock of inheritance. Thus each sharer, residuary or distant kindred whoever and whenever he succeeds passes on the property to a very large number of heirs on his death ; and this according to the blood tie, the nearer excluding the more remote. The number of heirs being always large, in course of time a sort of geometric progression is set up whereby capital flows from higher to lower levels like a river which gains volume and speed in its onward march towards its goal—the common brotherhood. This march of capital from the rich toward the poor is so gradual that it does not adversely affect the possessor, and so sure that the wealth cannot be conserved by the rich. A constant rise

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and fall and ebb and flow thus ensures free and harmonious circulation of economic wealth in society. The Islamic law of property as of inheritance does not aim at destroying capital like communism, if I rightly understand it, but seeks to nationalise it in the long run by reconciling it to labour. I shall have to deal with this aspect in the closing part of this discourse.

4. The fourth principle is that a will in favour of an heir is *void ab initio* while in favour of a non-heir, say, a remoter heir or a stranger, it is valid up to one-third only.

Now what is a will ? It is a longing of the testator to see the fulfilment of his desires when he is no more ; a design to outlive himself, an attempt to cast a reflection greater than his stature or to live more than one is allowed to. A mortal wanting to be immortal. Now this desire on the part of the testator may or may not be in-keeping with the higher purpose lying behind the Islamic laws as noted above. A power of testation militates against the policy and scheme of inheritance in case of heirs and hence it is prohibited. The heirs must take what the Word of God has given them by way of inheritance and not what the last holder may bestow upon them. This is again in conformity with the definition of title as emanating from the true Owner *i.e.*, God, and not from the last-holders (فريضة من الله). But in case of a non-heir or stranger the desire of the testator does not retard the distribution of wealth but rather accelerates and forestalls it and is a step forward in the right direction and hence it is allowed. The quantity $\frac{1}{3}$ denotes the golden mean and it is an argument that this quantity has already received a double momentum and has reached the second stage of circulation of wealth and hence the non-bequeathable part is $\frac{2}{3}$ or the double of it. Thus the resultant flow of capital will almost be equalised to inheritance in the long run. It may also be noted that in case of alienation or gift the alienor or donor has to divest himself as well of the property and the steadying effect of self-preservation must always be present to his mind and hence the law does not interfere, while in case of a will this check is missing and hence the legal interference. One may see that the minutest detail of the Islamic law agrees with the main principle which

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underlies it. The following are further illustrations of this hypothesis :

(*a*) Wakf alal-aulad : This is legal only when a recurring and ultimate benefit to the poor is provided for. Hence it is in line with the above spirit as distinct from accumulation of welath or a perpetuity.

(*b*) On the same principle institutions such as adoption, primogeniture, inherited life-estate, joint-tenancy, restraint on the power of disposal, which are different devices for the accumulation and conservation of wealth, are absolutely prohibited. I need not discuss them all.

(*c*) For the same reason there is no escheat to the Crown according to pure Islamic law, for an acknowledged kinsman becomes an heir or failing him, the property of an heirless Muslim falls into the Baitulmal (Public treasury and not State treasury) for the benefit of the Muslims.

(*d*) According to the pure Islamic law right of pre-emption is exercisable only in case of joint property or property having some common link. This is apparently to avoid litigation and trouble. Other qualifications under the pre-emption law which is the subject of so much adverse criticism as a restraint on free-bargaining and circulation of property—are the growth of custom and are unknown to Islamic law.

5. The fifth principle is that when the inheritance falls open the non-heir relatives of the deceased should be shown a gesture of good-will by giving them some portion. This is again to remind the heirs the higher purpose underlying the inheritance law and in this connection the Holy Quran makes such a pathetic appeal to the legal heirs that the direction becomes almost a precept.

These are some of the main features and outlines and not a complete picture of the Inheritance Law. But alongside it and as a superior complement to it there is another and far bigger institution into which the law of inheritance merges to ensure a speedier flow of capital, during the life-time of the

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individual even when he is acquiring property. And I may be permitted to give a brief sketch thereof as an allied subject.

PART III.

Out of the five essential articles of faith of a Muslim, Zakat or poor-rate is one. Poor-rate is a very poor rendering of the word Zakat which means both purification and increase. Kindly note that the institution is cosmopolitan, subject of course to local and national requirements.

I will take a simple instance to show what is meant by Zakat. It means, that if after satisfying all my wants, I have saved, say Rs. one hundred, and one year has elapsed over the saving, I must pay Rs. 2/8/-to the public treasury. But if I spend it, or lend it, without interest of course, or invest it during the year, I shall be exempted from this payment. Therefore the hoarder has to make his choice within the reasonable period of one year, out of these three alternatives. And the fact that one hundred rupees, when each year it is taxed, will dwindle to Rs. 39, the exempted minimum, must be a direct incentive to investment of the saving in preference to hoarding for its own sake. This is how human nature will react to it. And consequently two streams of wealth will flow out; one at the rate of 2½ per cent on the savings towards the Bait-ul-mal, and the other a bigger stream will release a tremendous amount of capital to be employed in trade and commerce and other profitable institutions. Both the meanings of the word Zakat are illustrated in this as it purifies wealth by way of charity and increases it by investment also. Thus whether one saves or spends or lends or invests, all the same one cannot deprive the society of the benefits of wealth. Of course there are different rates of Zakat according to the nature of the property. The following are some of the incidents of this institution :

(*a*) The establishment of Zakat is self-paying for the State may be slow to meet the expenses of a large and permanent staff required to collect and manage it in every town and hamlet.

(*b*) The large staff required will itself solve the problem of unemployment to a great degree.

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(c) By the release of a tremendous amount of capital for investment, wages must go up according to the ordinary law of demand and supply and professional beggary must disappear as it will be less-paying to beg than to work. And the stinging distinction between the rich and poor will disappear.

(d) Art, commerce, industry and invention must receive an incentive in the field of competition.

(e) Capital being reconciled to labour and richness to poverty, they will be an object of blessing rather than detestation and jealousy. The poor neighbour of a rich man must bless him as a benefactor rather than curse him as a usurper.

(f) The taxee himself is not allowed to give this tax in charity. He must pay it in the public treasury wherefrom it will be distributed according to the requirements and objects prescribed therefor, the details of which the establishment must keep and work out. Suffice it to say that in normal times even if one mouth remains unfed it redounds to the discredit of this department and the State. Considering the huge amount of wealth available this ideal is not too high to achieve.

There are various other incidents. But what is the reason and basis of this taxation? Three factors enter into the production of wealth, natural facilities and environment given by God, individual faculties, and social co-operation. So poor-rate is placed on the footing of compensation for the social co-operation, the objects thereof being the general needs of society including the welfare of the poor. And therefore the recipient of Zakat takes it not as alms but as a matter of right: (وفی اموالهم حق للسائل و المحروم) "And in their property there is a fixed portion for those who can ask for it," *i.e.*, the needy, and those who cannot ask for it, *i.e.* the dumb, the self-respecting poor man and even the animals. And this poor-rate is quite apart from the individual and private charity which is enjoined upon a Muslim for various occasions. Needless to say that interest or usuary can find no place in this picture and the problem of interest should be studied in this setting.

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To sum up. The law of inheritance has as its ultimate goal the happiness and well-being of society. It comes into play on the death of the last holder. The law of Zakat has the same object in view on a much larger scale and it works during the life-time of the acquirer of property. Both converge towards the same focus from different standpoints. The theory is translated into practice and the ideal into the real and each detail agrees with the fundamental principle. The end marks the beginning, making a complete circle. Obviously the subject is too vast for my humble knowledge to encompass and even so I had to switch off various currents of thought in the course of this narrative. This is only an indication of the spirit of the Islamic law of inheritance and if there be any obscurity it is attributable to me or to my fault of expression. I have only pointed towards the Muslim view-point in solving some very vast problems facing humanity.

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DID JESUS DIE ON THE CROSS TO BEAR THE SINS OF MANKIND ?

1. It is the belief of the Christians that through the sin of Adam and Eve, mankind became sinful and liable to the punishment of the hell. God being Merciful, His mercy, they assert, requires that man should be saved from this punishment ; and that as He is also just, His justice requires that man should be punished. To let both His justice and Mercy go together, God sent His only son who was born of woman and was therefore sinless to suffer punishment for the redemption of man.

This fantastic doctrine of atonement is based on nothing but misconception and misinterpretation of some verses of the Bible which indicate Christ's sufferings in his efforts to bring the Israelites back to the right path of God from which path they had gone astray, just as all other prophets underwent different kinds of sufferings to bring away man from sin to righteousness but did not die to bear the sins on themselves, *e.g.* Moses, Jacob, Samuel, John and others who according to the Bible, "had trial of cruel mockings and scourgings, yea moreover of bonds and imprisonment ; they were stoned, they were sawn asunder, were tempted, were slain with the sword ; they wandered about in sheepskins and goat-skins being destitute, afflicted, tormented, etc." (Hebrews 11 : 36).

Jesus was indeed subjected to cruel persecutions, but he by no means died an accursed death on the cross as will be proved later in this paper. How then did he redeem mankind with his blood ? The plain fact is that, as has been explained above, he suffered persecution in order to teach the Jews to free themselves from evil. It is this idea of virtually suffering persecutions till his natural death, for the sake of letting man avoid committing sins that is figuratively or literally expressed in the Bible. This idea is not a novelty and holds good even where dying to save men is plainly mentioned. The expression is used not only in the Hebrew language but in many other languages to signify extreme suffering. We have the authority of

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Paul to prove the propriety of this interpretation. For in I Corinthians 15 : 31, he is reported to have said, "I die daily", which expression can mean nothing else but that he suffered persecution daily for the conversion of people. It cannot be taken literally ; for Paul, we all know, actualiy died once and once only.

If on the contrary it is insisted that Jesus, because he was the only sinless being and the 2nd person of the Trinity, carried the sins of man upon himself on the cross and thus suffered punishment in place of man, then the following questions arise :

1. Is it not the height of injustice that God the Merciful and Most Wise Judge, should punish innocent Jesus in place of sinners ? Why could He not through His infinite Mercy forgive man without subjecting an innocent being to an underserved punishment ? In short, the idea of men's sins visited on an innocent person so as to enable the sinner to escape punishment is utterly fallacious.

2. Admitting for the sake of argument that Jesus was God (incarnate or partly God and partly man) the question is which suffered the punishment on the cross, humanity or divinity ? If humanity, then how can flesh save flesh when the flesh is corrupted through the sin of Adam and Eve ? On the other hand, if divinity suffered virtual sacrifice then why did the son alone suffer ; why not the Father nor the Holy Ghost ?

It cannot be admitted that Jesus willingly offered himself for that purpose for in that case he should not have prayed hard and asked his disciples to pray that the cup, *i.e.*, the death on the cross, might pass from him (*vide* Matt. 26 : 39-42) and Mark 14 : 35-42) ; neither should Jesus have said of Judas that he was unclean, sinful, and accursed because he betrayed him (John 13 : 11 and 19 : 11 : Mark 14 : 21). Indeed Judas' act should not have been construed as a betrayal for which, according to Jesus, he ought not to have been born ; but must have been regarded as a blessing for him.

Again if it is said that all three persons of the Trinity suffered through Christ's suffering, then it means that for three days God the Omnipotent was wounded and killed and remained dead for three days which is altogether absurd.

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3. If Christ's death on the cross were indispensable for the salvation of man, then why did not the son come immediately after the fall of Adam and Eve so that all generations might be saved outright from the beginning. Was he then devoid of feeling or was he immature for that purpose or afraid to venture out?

4. Even when after a very long expectation he had come and had suffered the pangs of expiatory death on the cross he was loath to meet people in the open, especially the Jews for whom he came, and the officers of the law. Was he afraid of being seized and crucified again?

5. That Jesus was sinless because he was born without father is in itself absurd; was not then his mother Mary sinful (God forbid) being of the seed of Adam and Eve? The Bible points out that anyone born of woman is not sinless (*vide* Job 25 : 4). Even Paul has gone so far to say, "God sending His Son in the likeness of sinful flesh, and for sin condemned sin in the flesh" (Romans 8 : 3). Hence Jesus too was sinful (God forbid). It follows that he could not atone for the sins of others.

6. The doctrine of atonement is plainly refuted by the Bible itself. For we read in Exodus 32 : 30, "Ye have sinned a great sin and now I will go up unto the Lord; peradventure I shall make an atonement for your sin". Here Moses wants to be punished for the sins of Israelites but God gave him this reply: "And the Lord said unto Moses, whoseover hath sinned against Me, him will I blot out of My book" (Exodus 32 : 33) This proves decisively that atonement in the sense the Christian Church takes it is not acceptable to God.

7. Furthermore, the Bible shows that atonement is against practical wisdom: "His own iniquities shall take the wicked himself, and he shall be holding with the cords of his sins." (Proverbs 5 : 22) "The fathers shall not be put to death for the children, neither shall the children be put to death for the fathers: every man be put to death for his own sin," (Deut. 24 : 16). In Ezekiel, chapter 18, God, after reproving the unjust parable of sour grapes, goes on to show that all who keep away from sin and do good, will not be punished"....."the righteousness of the righteous shall be upon him and the wickedness of the wicked shall be upon him" (verse 20).

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8. It is undeniable that there were righteous and sinless people before Christ among whom may be mentioned Zacharias and his wife who were righteous before God, walking in all the commandments and ordinances of the Lord blameless" (Luke 1 : 5, 6) ; John (Mark 6 : 20) ; Simeon Luke 2 : 25) ; Solomon (Judges 13 : 5) ; Hezekiah (II Kings 18: 3-7) ; Josiah (II Kings 22 : 2) ; and Abel (Matt. 23 : 35, Hebrews 11 : 4) notwithstanding his being the direct son of Adam and Eve. From this it can be seen that the theory of original sin is all a mere fuss ; for if Abel and others were righteous and sinless so that God was pleased with them, then how did all men become sinful ? Moreover, we know from original experience that all the children of drunkards are not drunkards. It is impossible therefore for all mankind to become sinful through the sin of Adam and Eve. It is said by some Christians that there were of course righteous men before Christ but the doors of Heaven were closed to them till Christ's coming. But the Bible is against this view as there are verses showing that Elijah and Enoch went into heaven before Christ's coming. (*vide* II Kings 2 : 11, and Hebrews 11 : 5).

9. The Bible tells as that as a punishment for the sin of Adam and Eve, man has to eat bread in the sweat of his brow and women are to bring forth in sorrow (Genesis 3 : 16-19) As people including even Christians still sweat for their daily bread and women suffer the pains of child-birth, it stands to reason that Christ's death on the cross was in vain. Moreover, as barren women and spinsters who do not marry do not suffer the pains of child-birth, it may therefore be assumed that for these women Christ's mission has no use whatsoever.

10. As has already been shown, Christ's death on the cross does not save man from the punishment of the original sin ; neitner does it save man from the consequences of his daily sins ; for people are punished for crimes, transgressions and evils even on this earth by Churches and Governments ; and in the next world the wicked will be condemned as well according to the Gospels (Matt. 7 : 21-23 and Luke 13 : 27). It is clear therefore that Christ did not die to bear the sins of man upon him.

11. Even the Lord's Prayer of the Christians (Matt. 6 : 10-15) is against the doctrine of atonement, for while they pray God to forgive them their debts (whether self-incurred) or through